IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 178 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

COMMISSIONER OF INCOME-TAX

Versus

PARMANAND M SHAH

Appearance:

MR AKIL QURESHI FOR MR MANISH R BHATT for Applicant.

NOTICE SERVED for Respondent No. 1

CORAM : MR.JUSTICE B.C.PATEL
and
MR.JUSTICE D.A.MEHTA

Date of decision: 11/12/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE D.A.MEHTA)

1 The Income Tax Appellate Tribunal, Ahmedabad Bench 'A' has referred the following question at the instance of the Commissioner, under the Income Tax Act,1961 (hereinafter referred to as 'the Act') :

"Whether, the Appellate Tribunal is right in directing the Income-tax Officer to delete the income of his wife share in the firm of M/s.Sonal Textile Company added under section 64(1) of the Income-tax Act, in which her husband is also a partner ?"

2 However, in view of the fact that the question referred, does not bring out the correct controversy, it is required to be reframed and we reframe the same in the following terms :

"Whether, the Appellate Tribunal is right in directing the Income-tax Officer to delete the income of his wife share in the firm of M/s.Sonal Textile Company added under section 64(1) of the Income-tax Act, in which her husband as Karta of HUF is also a partner ?"

3 At the time of hearing, Mr.Akil Qureshi, learned Standing Counsel appeared on behalf of applicant-revenue. Though served none appears on behalf of the assessee. Mr.Qureshi very fairly pointed out that the controversy is concluded in favour of the assessee by the decisions of the Apex Court in the case of C.I.T. vs. Harbhajan Lal, 204 I.T.R.361 and in the case of C.I.T. vs. Shri Om Prakash & Others, 217 I.T.R.785.

4 In the firm of M/s.Sonal Textile Company, the assessee Individual's wife is a partner along with the HUF of which assessee is a karta. In view of the fact that Individual is not a partner in the partnership firm the ratio of the aforesaid decisions of the Apex Court squarely applies and we do not find any reason to take a different view from the one taken by the Tribunal.

5 The Tribunal was therefore right in law in directing the I.T.O. to delete the income of the wife i.e. share income from the firm of M/s. Sonal Textile Company added under section 64(1) of the Act in which the husband as Karta of HUF was also a partner. The question as reframed is, therefore, answered in the affirmative i.e. in favour of the assessee and against the revenue.

6 The reference stands disposed of accordingly. There shall be no order as to costs.

Sd/- Sd/-
(B.C.Patel,J) (D.A.Mehta,J)

m.m.bhatt